

Appln No. 10/816,566
Amdt date April 4, 2008
Reply to Office action of January 7, 2008

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Claims 1-53 are now pending in the application. Claim 11 has been allowed if rewritten independent form. Claims 1, 11, 24, and 34 have been amended. Claims 52 and 53 are new. Claim 11 has been rewritten in independent form and is therefore allowable.

Claims Rejections - 35 U.S.C. § 102

The Examiner has rejected Claims 1-10 and 12-51 under 35 U.S.C. § 102(b) as being anticipated by Dryden (US 4,256,099).

Amended Claims 1 and 24 include (underlining added for emphasis) "... a stop on the intraoral segment to secure the intraoral segment within the oropharynx against movement of the tube out of the mouth of the user" and "an intermediate segment extending between the extraoral and intraoral segments and comprising a length sufficient for extending along an outside of dentitions of the user and around a rearmost dentition of the user to create a buccopharyngeal pathway of the mouth of the user." The Applicant submits that Dryden does not teach the above limitation.

Dryden, while providing for a stop collar 21 located on an extraoral segment of the tubes for preventing movement of the tubes into the mouth of a user (FIG. 1; column 2, lines 31-33), does not disclose "a stop on the intraoral segment to secure the intraoral segment within the oropharynx against movement of the tube out of the mouth of the user." The Applicant points the Examiner to FIG. 3 of the present patent application, which shows a stop 13 "on the intraoral segment to secure the intraoral segment within the oropharynx against movement of the tube out of the mouth of the user."

Furthermore, Dryden does not disclose "an intermediate segment extending between the extraoral and intraoral segments and comprising a length sufficient for extending along an outside of dentitions of the user and around a rearmost dentition of the user to create a buccopharyngeal pathway of the mouth of the user."

Appln No. 10/816,566
Amdt date April 4, 2008
Reply to Office action of January 7, 2008

Accordingly, the Applicant submits that Claims 1 and 24 are not anticipated by Dryden under 35 U.S.C. § 102(b).

Claims 2-23, 46, and 49-53 are dependent on Claim 1 and therefore include all of the limitations of Claim 1 and additional limitations therein. As such, these claims are also allowable based upon Claim 1 and the additional limitations therein. Claims 25-33 and 45 are dependent on Claim 24 and therefore include all of the limitations of Claim 24 and additional limitations therein. As such, these claims are also allowable based upon Claim 24 and the additional limitations therein.

For example, with respect to Claims 52 and 53, Dryden does not disclose "wherein the intermediate segment comprises an additional preformed bend adjacent to the stop and to a junction between the intermediate segment and the intraoral segment" and does not disclose "the additional preformed bend is bent at an angle between approximately 65 degrees and 135 degrees." As such, these claims also are not anticipated by Dryden under 35 U.S.C. § 102(b).

Claim 34 includes (underlining added for emphasis) "... positioning an intraoral segment of the tube, which extends to the distal end of the tube and has at least one opening, beyond a retromolar space in the mouth of the user, into the oropharynx and terminating between the posterior tongue and the soft palate" and "positioning an intermediate segment of the tube, which extends between the extraoral and intraoral segments, along an outside of dentitions of the user and around a rearmost dentition of the user to create the buccopharyngeal pathway of the mouth of the user." The Applicant submits that Dryden does not teach the above limitation.

Dryden, while providing for tube 11 terminating in the esophagus or larynx (column 3, lines 25-25; FIG. 1 shows the tube terminating in the esophagus; see also column 3, lines 36-37), and while providing for tube 12 terminating where the respiratory and digestive pathways diverge (tube 12 ends at 55, which is where the respiratory 54 and the digestive pathways diverge), does not disclose the above limitation. In Dryden, tube 12 terminates in the bottom part of the pharynx in the hypopharynx/laryngopharynx, which is below the oropharynx and the posterior tongue and the soft palate (see FIG. 1; see also "pharynx" and "laryngopharynx" in Wikipedia). Tube 11 terminates in the esophogus or larynx (column 3, lines 25-35; see also

Appln No. 10/816,566
Amdt date April 4, 2008
Reply to Office action of January 7, 2008

column 3, lines 7-13). As such, Dryden does not disclose "positioning an intraoral segment of the tube, which extends to the distal end of the tube and has at least one opening, beyond a retromolar space in the mouth of the user, into the oropharynx and terminating between the posterior tongue and the soft palate."

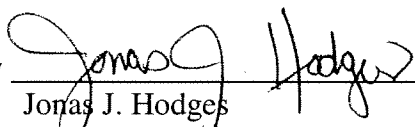
In addition, Dryden does not disclose "positioning an intermediate segment of the tube, which extends between the extraoral and intraoral segments, along an outside of dentitions of the user and around a rearmost dentition of the user to create the buccopharyngeal pathway of the mouth of the user."

Accordingly, the Applicant submits that Claim 34 is not anticipated by Dryden under 35 U.S.C. § 102(b).

Claims 35-44 and 47-48 are dependent on Claim 34 and therefore include all of the limitations of Claim 34 and additional limitations therein. As such, these claims are also allowable based upon Claim 34 and the additional limitations therein.

Therefore, in view of the above amendment and remarks, the Applicant respectfully submits that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. As such, allowance of the above Application is requested. If there are any remaining issues that can be addressed over the telephone, the Examiner is cordially invited to call the Applicant's attorney at the number listed below.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Jonas J. Hodges
Reg. No. 58,898
626/795-9900

JJH/cah

CAH PAS787377.1-*04/4/08 11:22 AM